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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/932, 427 09/17/97 KITAMURA

Y 1081.1055/JD

EXAMINER

TM02/1010

STAAS & HALSEY
700 ELEVENTH STREET NW
SUITE 500
WASHINGTON DC 20001

PORTER, G

ART UNIT

PAPER NUMBER

2187

23

DATE MAILED:

10/10/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

SM

Office Action Summary	Application No. 08/932,427	Applicant(s) Kitamura
	Examiner Gary J. Portka	Art Unit 2187



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Jul 24, 2001

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1, 3-5, 7, 9-11, and 13-16 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1, 3-5, 7, 9-11, and 13-16 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are objected to by the Examiner.

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) Notice of References Cited (PTO-892)

18) Interview Summary (PTO-413) Paper No(s). _____

16) Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) Notice of Informal Patent Application (PTO-152)

17) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

20) Other: _____

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DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 24, 2001 has been entered.
2. Claims 1, 7, 9-11, and 13-16 have been amended by Applicant. Claims 1, 3-5, 7, 9-11, and 13-16 are pending.

Claim Objections

3. The disclosure is objected to because of the following informalities:
 - a. Claim 13 recites "said designated logical volume" at lines 16-17, which lacks proper antecedent basis.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

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5. Claims 1, 3-5, 7, 9-11, and 13-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Tanaka et al., U.S. Patent 5,542,064 (hereinafter "Tanaka").

6. As to claims 1, 7, and 13-16 Tanaka discloses a *RAID apparatus and control method comprising:*

a. *Plurality of disk units* (Drives 16-x) *storing a plurality of copies of each of data of logical volumes* ("identical data"), and *disk controller* (2) *for accessing the disk units at the logical volumes* (see Abstract, Figures 1-3, column 2 lines 14-17 and 54-67);

b. *The disk controller including a memory storing number of request operations to each disk, and control means comparing these and selecting the single disk having the least* (see Figure 5, column 6 line 62 to column 7 line 17, and column 8 lines 1-47), *where the number is incremented/decremented for each new request/completion* (see column 10 lines 19-24 and 44-49);

c. *Wherein the disk units perform operations in a queued order* (see column 4 lines 42-49, column 7 lines 33-53, and column 8 lines 1-5);

d. *Wherein the memory stores the recited table indicating correspondence between disks and logical volumes* (see Figure 3, and column 4 line 60 to column 5 line 27; each address designates a logical volume since for example as shown in Figure 3 logical address 2 designates a physical address at A1 that contains a plurality D1 of bytes on disk drive 1 (equals logical volume copy on one disk), or alternatively designates the physical addresses A1, A2, and A3 on three disks (equals the logical volume that spans the disks)) and *selection of the disk on which a logical volume is allocated*

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by designation of the logical volume by a high-rank apparatus (CPU, see Abstract, selection indicated in Figure 3).

7. As to claims 3 and 9, Tanaka discloses *channel adapter* (4-x and 5) as claimed (see Figure 1, and column 3 lines 58 to column 4 line 1), *device adapter* (14 and 17-x) *for accessing the disk units* (see Figure 1 and column 4 lines 19-21), and *resource manager circuit* as claimed (including MP 11-x, see column 4 lines 13-24).

8. As to claims 4 and 10, Tanaka discloses the *resource manager incrementing and decrementing number of operations of a disk unit* (see column 10 lines 19-24 and 44-49).

9. As to claims 5 and 11, Tanaka discloses *the memory stores status information for the disk units, for use in selecting a normal unit* (see column 7 lines 4-9).

Response to Arguments

10. Applicant's arguments filed July 24, 2001 have been fully considered but they are not persuasive. Applicant argues that the selecting and accessing steps of Tanaka are different than the claimed invention because Tanaka selects a number of drives having the lowest number of commands queued, and accesses the first connected drive; the present invention selects the single drive having the minimum number of operations and accesses it. It is not agreed that the claim language is patentably distinct in this regard. Since Tanaka selects a plurality of drives that have the lowest number of operations, Tanaka selects the drive having the lowest number; if this drive is connected first it is accessed, thus reading on the claim language. Alternatively, the plurality of drives selected by Tanaka in the description cited above at column 8 each equally have zero pending operations, and

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thus each may be seen as the drive having minimum number of operations, regardless of which is ultimately accessed.

Conclusion

11. A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the mail date of this letter. Failure to respond within the period for response will result in Abandonment of the application (see 35 USC 133, MPEP 710.02, 710.02(b)).
12. Any inquiry concerning this communication from the examiner should be directed to Gary J. Portka at telephone number (703) 305-4033. The examiner can normally be reached on weekdays from 9:00 A.M. to 5:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Do Yoo, can be reached at (703) 308-4908.

Any response to this action should be mailed to (or faxed as provided below):

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Fourth Floor (Receptionist).

The fax phone number for the organization where this application or proceeding is assigned are as follows:

- | | |
|----------------|--|
| (703) 746-7238 | (After Final communications) |
| (703) 746-7239 | (Official communications) |
| (703) 746-7240 | (Status inquiries, draft communications) |

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Any inquiry of a general nature relating to this application or proceeding should be directed to the Group receptionist, whose telephone number is (703) 305-3900.

Gary J. Portka

Patent Examiner

October 5, 2001

A handwritten signature in black ink, appearing to read "Gary J. Portka".